

REMARKS

Claims 6-13 and 16 were pending when the present Office Action was mailed on July 2, 2010. In this response, claims 6, 9, 12 and 16 have been amended to clarify certain features of these claims and to expedite prosecution of this application; the foregoing amendments are made without prejudice to pursuing these claims in unamended or other forms in a continuation or other application. No claims have been canceled in this response and no claims have been added in this response. Accordingly, claims 6-13 and 16 are currently pending.

In the Office Action dated July 2, 2010, claims 6-13 and 16 were rejected. More specifically, the status of the application in light of this Office Action is as follows:

- (A) Claims 6, 9, 12 and 16 were rejected on the ground on nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 10 and 12 of U.S. Patent No. 7,026,927;
- (B) Claims 6, 9, 12 and 16 were rejected on the ground on nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,977,504;
- (C) Claims 6-7, 9-10, 12-13 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Mate et al. (US Patent Pub. No. 2002/0193685);
- (D) Claims 6-13 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Dimmer et al. (US Patent Pub. No. 2003/0122653);
- (E) Claims 8 and 11 were rejected under 35 U.S.C. § 103(a) as being over Mate as applied to claims 7 and 10 above, in view of Dimmer.

As a preliminary matter, applicants respectfully request an Examiner's Interview prior to any substantive action or issuance of an Office Action in order to further prosecution of the pending application.

A. Response to the Double Patenting Rejections of Claims 6, 9, 12 and 16

Applicants respectfully request abeyance of the double patenting rejections until all substantive rejections have been overcome. Upon allowance of claims in the pending application, applicants will address the double patenting rejections and the need to submit a terminal disclaimer, if any.

B. Response to the Section 103(a) Rejections of the Claims

Claims 6, 9, 12 and 116 have been amended to clarify certain features of these claims, and more specifically, to clarify aspects of the excitation source and the receiver. The Office Action notes "unique time periods" in the Section 103 rejection with respect to Dimmer and further notes that it would be obvious to one of ordinary skill in the art that the excitation source may be turned on or off over time in the Section 103 rejection with respect to Mate. Without agreeing to the Office Action's characterization of the cited art, and solely for purposes of this Response, applicants adopt the characterization of the cited art and respectfully argue that neither the noted unique time periods of Dimmer nor the on-off gating of Mate are relevant to the excitation source having an adjustable frequency and the receiver providing a resonant frequency of the marker.

More specifically, as claimed, the excitation source can have an adjustable frequency and the receiver can adaptably adjust the excitation interval and/or observation interval to match the resonant frequency of the marker. As further disclosed in the specification, the receiver is adaptable to work in coordination with the excitation source to tune the system to the specific characteristics of the marker. (Specification, page 15) Specifically, the excitation source has an adjustable frequency that can be tuned in accordance with an analysis made by the receiver. (Specification, page 15) Because of various manufacturing variances and other factors, the marker may not have an accurately predictable resonant frequency. (Specification, page 15) Thus, the receiver identifies the resonant frequency of the marker and provides that

information to the excitation source. (Specification, page 15) The excitation source can then provide an exciting pulse at a frequency that is closely matches to the resonant frequency of the marker. (Specification, page 15) Applicants respectfully submit that the claims as amended clarify over the cited art and pending resolution of the double patenting objection, are now in condition for allowance.

Conclusion

In view of the foregoing, the pending claims comply with 35 U.S.C. § 112 and are patentable over the applied art. Applicants accordingly request reconsideration of the application and respectfully submit that the application is in condition for allowance. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to contact Susan Betcher at (206) 359-6088.

If an additional fee is due, please charge our Deposit Account No. 50-0665, under Order No. 341148018US from which the undersigned is authorized to draw.

Dated:

1/3/11

Respectfully submitted,

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